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***Via Certified Mail - Return Receipt Requested***

April 28, 2014

John Thompson, Resources Division Manager  
Division of Public Works & Planning/ Resources Division  
County of Fresno  
Special Districts Administration  
2220 Tulare Street, 6<sup>th</sup> Floor  
Fresno, CA 93721

**Re: Notice of Violations and Intent to File Suit under the Safe Drinking Water Act**

Dear Mr. Thompson and Special Districts Administration:

**NOTICE**

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Safe Drinking Water Act ("SDWA" or the "Act"), 42 U.S.C. §§300f to 300j-26, that River Watch believes are occurring at the Fresno County Service Areas and Fresno County Waterworks District identified in this Notice.

The Safe Drinking Water Act §300j-8(b)(1)(A) requires that sixty (60) days prior to the initiation of a civil action under SDWA §300j-8(a)(1), 42 U.S.C. §1449(a)(1), a citizen must give notice of the intent to sue to the alleged violator and applicable federal and state authorities. River Watch is sending you this Notice to preserve its rights under the Safe Drinking Water Act.

River Watch hereby gives notice to the County of Fresno, Division of Public Works & Planning Resources Division ("the County,") that following the expiration of sixty (60) days from the date of receipt of this Notice, River Watch will be entitled to bring suit in the United States District Court against the County for violations of requirements prescribed by

or under the SDWA including, but not limited to: non-compliance with maximum contaminant levels ("MCLs") issued under SDWA §300g-1, 42 U.S.C. §1412 and the Code of Federal Regulations, as exemplified by the incidents of non-compliance identified and outlined in this Notice; failure to properly monitor water quality delivered to end-users; and, failure to conduct required sampling with respect to the three (3) public water systems identified below, operated by the County of Fresno as Special Districts:

County Service Area No. 32 - Cantua Creek  
County Service Area No. 49 - J.E. O'Neill Farming Community  
County Waterworks District No. 40 - Shaver Springs

The SDWA requires that any Notice regarding an alleged violation of any requirement prescribed by or under the Act shall include sufficient information to permit the recipient to identify the following:

1. *The specific requirement alleged to have been violated.*

In addition to the narratives below, River Watch identifies the results of "All Source Chemical Monitoring" obtained from the California Department of Public Health's Division of Drinking Water and Environmental Management identifying repeated non-compliance with MCLs set by the SWDA at source points in violation of the SDWA's regulation of the maximum permissible level of contaminants in water delivered to any user of a public water system, and failure to conduct required sampling, in violation of SDWA §300fg-1, 42 U.S.C. §1412.

2. *The activity alleged to constitute a violation.*

County Service Area No. 32 - Cantua Creek – located on the north side of Clarkson Avenue, west of San Mateo Avenue, provides drinking water to a population of approximately 230 residents in the Cantua Creek farm labor housing development. It is regulated under domestic Water Supply Permit No. 03-23-09P-017, issued by the California Department of Public Health. The water supply is raw surface water which is treated prior to distribution. River Watch has set forth narratives below describing "positive" detections above the MCLs for the disinfection byproducts haloacetic acids (HAA5) and total trihalomethanes (TTHM); occurring during specific quarterly reporting periods between 2009 and 2014.

County Service Area No. 49 - J.E. O'Neill Farming Community – located in the area of S. Lassen Ave and W. Mt Whitney Ave, in the non-contiguous areas adjacent to the Fresno - Coalinga Road (SR-145), approximately 3 miles southwest of the community of



Five Points, provides drinking water to a population of approximately 450 residents in the farming community of J.E. O'Neill. It is regulated under domestic Water Supply Permit No. 03-23-12P-016 issued by the California Department of Public Health. The water supply is raw surface water, treated prior to distribution. River Watch has set forth narratives below describing "positive" detections above the MCLs for haloacetic acids (HAA5) and total trihalomethanes (TTHM); and, failure to conduct required sampling all occurring during specific quarterly reporting periods between 2009 and 2014.

County Waterworks District No. 40 - Shaver Springs – mainly along Shaver Springs Road near its intersection of Tollhouse Road, with Tocaloma Road to the north and Elk Lane and Natoma Road to the south, provides drinking water to a population of approximately 160 residents for the Shaver Springs subdivision. It is regulated by the California Department of Public Health. The water supply is groundwater. River Watch has set forth narratives below describing "positive" detections above the MCL for radionuclides, and failure to conduct required sampling, occurring during specific quarterly reporting periods between 2009 and 2014.

The violations for each of these Special Districts are described in this Notice with particularity, and are based on data detailed in public reports and other documents in the County's possession or otherwise available to the County. In addition to these reported violations, River Watch could find no evidence in any public reports that the County has determined the quality of water delivered to end-users in any of the three (3) identified Special Districts. River Watch incorporates by reference the records cited below from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The entity responsible for the alleged violation is the County of Fresno, Division of Public Works and Planning, Resources Division, and those of its operators and employees responsible for compliance with the SDWA and compliance with any applicable state and federal regulations and permits.

4. *The location of the alleged violation.*

The location or locations of the various violations are the locations of the Special Districts as set forth in Paragraph 2 above, and in the domestic Water Supply Permits for the Special Districts identified in this Notice.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined records on file with the California Department of Public Health and the County. The range of dates covered by this Notice is from April 28, 2009 to April 28, 2014. River Watch will from time to time update this Notice to include violations which occur after the range of dates covered by this Notice. Specific violations occurring on specific dates are listed herein. Some of the violations are continuous in nature such as failure to monitor water quality at point of delivery. Therefore, each day constitutes a separate violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is California River Watch, 290 S. Main Street, #817, Sebastopol, CA 95472, referred to throughout this Notice as "River Watch." River Watch is a 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance and help restore the groundwater and surface water environs of California including, but not limited to its rivers, creeks, streams, wetlands, vernal pools and tributaries. River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org) or through its attorneys.

River Watch has retained legal counsel with respect to the violations set forth in this Notice. All communications should be addressed to:

David Weinsoff, Esq.  
Law Office of David Weinsoff  
138 Ridgeway Avenue  
Fairfax, CA 94930  
Tel. 415-460-9760  
Fax. 707-528-8675

## **STATUTORY BACKGROUND**

SDWA, 42 U.S.C. §§300f to 300j-26, was enacted in 1974 to "assure that water supply systems serving the public meet minimum national standards for protection of public health." Safe Drinking Water Act, Legislative History, H.R. Rep. No. 93-1185 (1974), reprinted at 1974 U.S.C.C.A.N. 6454. The Act authorizes the EPA to "establish federal standards applicable to public water supplies from harmful contaminants, and establish a joint federal-state system for assuring compliance with these standards and for protecting underground sources of drinking water." *Id.* at 6454-55.



Section 1412(b)(1)(A) of the SDWA requires the EPA to identify contaminants in public water supply systems that may have an adverse human health effect and for which regulation would present a "meaningful opportunity" for reduction of that health risk. 42 U.S.C. §300g-1(b)(1)(A). For each of the contaminants identified under Section 1412(b)(1), Section 1412(b)(1)(E) requires the EPA to establish maximum contaminant level goals ("MCLGs") as well as MCLs. 42 U.S.C. §300g-1(b)(1)(E). A violation of the SDWA occurs when testing/monitoring indicates that the level of a contaminant in treated water exceeds the MCL.

Private parties may bring citizens' suits pursuant to 42 U.S.C. §300j-8 to enforce violations of MCLs. River Watch contends that the County, as operator of the three (3) Special Districts identified in this Notice, is, among its other activities, a supplier of drinking water regulated under the SDWA and, as detailed in the most recent monitoring reports provided by the California Department of Public Health, violating the MCLs for radionuclides, and the disinfection byproducts HAA5 and TTHM.

## **VIOLATIONS**

River Watch contends that between April 28, 2009 and April 28, 2014, the County violated the SDWA and the Code of Federal Regulations by failing to ensure the drinking water supplied to its customers met and continues to meet the standards required by law including, but not limited to: exceeding MCLs for HAA5, TTHM, and radionuclides; failure to conduct required sampling; and, inadequate compliance with monitoring requirements obligating the supplier to confirm water quality at the point of delivery.

The violations listed below are derived from records publically available, or records in the possession and control of the County. Monitoring dates and reported exceedances were taken from files on record with the California Department of Public Health and records in the EPA ECHO database.

## **COUNTY SERVICE AREA NO. 32 - CANTUA CREEK**

### **MCL - HAA5 - 60 ug/L**

Monitoring Dates and Reported Exceedances  
(Quarters out of Compliance and Running Annual Averages):

1 <sup>st</sup> Qtr 2013 - 110 ug/L	(RAA - 63 ug/L)
2 <sup>nd</sup> Qtr 2013 - 75 ug/L	(RAA - 68 ug/L)

**MCL - TTHM - 80 ug/L**

Monitoring Dates and Reported Exceedances  
(Quarters out of Compliance and Running Annual Averages):

1 <sup>st</sup> Qtr 2012 - 130 ug/L	(RAA 93 ug/L)
2 <sup>nd</sup> Qtr 2012 - 140 ug/L	(RAA 109 ug/L)
3 <sup>rd</sup> Qtr 2012 - 130 ug/L	(RAA 118 ug/L)
4 <sup>th</sup> Qtr 2012 - 140 ug/L	(RAA 135 ug/L)
1 <sup>st</sup> Qtr 2013 - 190 ug/L	(RAA 150 ug/L)
2 <sup>nd</sup> Qtr 2013 - 140 ug/L	(RAA 150 ug/L)

**COUNTY SERVICE AREA NO. 49 - J.E. O'NEILL FARMING COMMUNITY**

**MCL - HAA5 60 ug/L**

Monitoring Dates and Reported Exceedances  
(Quarters out of Compliance and Running Annual Averages):

3 <sup>rd</sup> Qtr 2012 - 82 ug/L	
4 <sup>th</sup> Qtr 2012 - no reported results	
1 <sup>st</sup> Qtr 2013 - 110 ug/L	(RAA - 83 ug/L)
2 <sup>nd</sup> Qtr 2013 - 98 ug/L	(RAA - 97 ug/L)

**MCL - TTHM 80 ug/L**

Monitoring Dates and Reported Exceedances  
(Quarters out of Compliance and Running Annual Averages):

1 <sup>st</sup> Qtr 2012 - 120 ug/L	(RAA - 83ug/L)
2 <sup>nd</sup> Qtr 2012 - 130 ug/L	(RAA - 98 ug/L)
3 <sup>rd</sup> Qtr 2012 - 150 ug/L	(RAA - 116 ug/L)
4 <sup>th</sup> Qtr 2012 - 140 ug/L	(RAA - 135 ug/L)
1 <sup>st</sup> Qtr 2012 - 180 ug/L	(RAA - 150 ug/L)
2 <sup>nd</sup> Qtr 2012 - 160 ug/L	(RAA - 158 ug/L)

## COUNTY WATERWORKS DISTRICT NO. 40 - SHAVER SPRINGS

### MCL - Gross Alpha Emitters - 15 picoCuries per Liter

Monitoring Dates, Running Annual Averages, and Reported Exceedances:

06/04/2009 - 22.0 pCi/L  
09/15/2009 - 19.4 pCi/L  
03/25/2010 - 97.8 pCi/L  
06/10/2010 - 28.5 pCi/L  
06/23/2010 - 28.0 pCi/L  
(No reported sampling for 3<sup>rd</sup> Qtr 2010)  
12/21/2010 - 20.0 pCi/L  
04/13/2011 - 23.7 pCi/L  
06/21/2011 - 36.5 pCi/L  
09/13/2011 - 34.6 pCi/L  
12/15/2011 - 31.9 pCi/L  
03/14/2012 - 37.3 pCi/L (GA-Ur Quarterly RAA - 15.9 pCi/L)  
06/07/2012 - 16.0 pCi/L  
10/04/2012 - 42.4 pCi/L (GA-Ur Quarterly RAA - 19.1 pCi/L)  
12/06/2012 - 27.4 pCi/L (GA-Ur Quarterly RAA - 19.1 pCi/L)  
03/07/2013 - 34.8 pCi/L (GA-Ur Quarterly RAA - 17.8 pCi/L)  
06/11/2013 - 43.3 pCi/L (GA-Ur Quarterly RAA - 17.1 pCi/L)

### MCL - Combined Uranium - 20 pCi/L

Monitoring Dates and Reported Exceedances:

03/25/2010 - 67.3 pCi/L  
06/10/2010 - 26.4 pCi/L  
06/23/2010 - 27.0 pCi/L  
09/13/2011 - 34.4 pCi/L

### MCL - Ra-226 + Ra-228 - 5 pCi/L

Monitoring Dates and Reported Exceedances:

09/15/2009 - 18 pCi/L (13.1 + 4.9)



## **Point of Use Quality Assurance**

Although drinking water suppliers tend to sample water quality from a central location such as directly after treatment, the water supplier is responsible for water quality either at the point of use or point of delivery. There is no evidence in the public record that the County has ever assured its water quality at point of use or point of delivery for each of the THREE (3) Special Districts identified in this Notice.

## **CONCLUSION**

It is presumed that the water supplier is in continual violation of the applicable standard until constituent measurements are below that applicable standard. Therefore, each day after an exceedance and until the supplier is in compliance is considered a separate violation of the SDWA and the court can grant relief in the form of requiring that the drinking water be brought to meet drinking water standards, awarding of attorney fees, and in some cases, penalties.

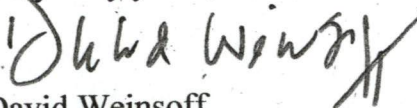
The importance of quality drinking water cannot be overstated. MCLs are established by the SDWA with the biology of healthy young adults in mind. The same standards are set for everyone, including children, pregnant women, the elderly and infirm. River Watch is understandably concerned about the health effects of water systems which continue to provide contaminants above MCLs. Both radionuclides and disinfection byproducts in drinking water have been linked to health problems, most notably cancer, as well as reproductive and developmental effects. It is the County's responsibility to conform to the standards set forth in the Act, to comply with proper monitoring requirements, as well as to ensure that water supplied has been tested at the point of delivery.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter, River Watch has cause to file a citizens' suit under SDWA §1449 against the County for the violations identified and described in this Notice.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations identified in this Notice. However, if the County wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.



Very truly yours,

  
David Weinsoff

DW:lhv

cc: Administrator  
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